

### **Remarks**

Applicants have canceled claims 1-10, 12, 14-16, 18, and 20-21 without prejudice or disclaimer. New claims 23-42 have been added in order to claim additional embodiments of the subject matter of the provisionally-elected group. New claims 23-42 find support throughout the specification and claims as originally filed, and thus no new matter has been added. Attached hereto is a marked-up version of the changes made by the current amendment, captioned "Version With Markings To Show Changes Made."

Originally filed claims 11, 13, 17, 19, and 22, and new claims 23-42, are pending.

### **The Restriction Requirement**

Pursuant to Paper No. 6, mailed October 2, 2002, the Examiner has required an election under 35 U.S.C. § 121 of one of Groups I-VI. The Examiner contends that the inventions of the Groups are distinct, each from the other. The Examiner has also required a further election of a SEQ ID NO from those listed in Table 1.

In order to be fully responsive, Applicants provisionally elect, *with traverse*, the subject matter of Group I, directed to, *inter alia*, nucleic acids. Applicants further provisionally elect, *with traverse*, polynucleotides encoding SEQ ID NO:21, including but not limited to SEQ ID NO:8.

With respect to the Examiner's division of the invention into six groups and the reasons stated therefor, Applicants respectfully disagree and traverse. As the Examiner has recognized, even where patentably distinct inventions appear in a single application, restriction remains improper unless the examiner can show that the search and examination of these groups would entail a "serious burden". See M.P.E.P. § 803. In the present situation, although the Examiner has argued that Groups I-VI are separately classified or represent divergent subject matter, Applicants nonetheless submit that, with respect to a given sequence, a search of the claims of the groups directed to that sequence would also provide useful information for the claims of the other groups directed to that sequence. For example, in many if not most publications disclosing a protein, the authors also disclose nucleic acids encoding the protein, antibodies to the protein, and methods of using the same. Thus, since the searches for proteins, nucleic acids encoding such proteins, antibodies to such proteins, and methods of using the same commonly overlap,

Applicants respectfully submit that the Examiner's assertion that the combined search and examination of such compositions and methods using the same would entail a serious burden as to a particular sequence has been rebutted, even assuming *arguendo* that all of the searches were not coextensive.

Accordingly, in view of M.P.E.P. § 803, claims directed to polynucleotides encoding SEQ ID NO:21, the polypeptides encoded thereby, antibodies recognizing such polypeptides, and methods of using the same should be searched and examined in the present application. Applicants therefore respectfully request that the restriction requirement under 35 U.S.C. § 121 be reconsidered and withdrawn.

Further, although not acquiescing to the restriction requirement, Applicants nevertheless note that the claims of Group I and the claim of Groups IV are related as between a product and a process for using the product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), if an elected product claim is found allowable, "withdrawn process claims which depend from or otherwise include all of the limitations of the allowable product claim will be rejoined." M.P.E.P. § 821.04. Accordingly, Applicants respectfully request that if any of the claims of Group I, i.e., new claims 23-42, are found allowable, then the process claim of Group IV, i.e., claim 17, be rejoined and examined for patentability.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

#### ***Conclusion***

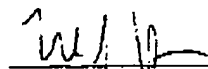
Entry of the above amendment is respectfully solicited. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the examination of this application.

Finally, if there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an additional

extension of time under 37 C.F.R. § 1.136, such an extension is requested and the appropriate fee should also be charged to our Deposit Account.

Respectfully submitted,

Dated: March 31, 2003



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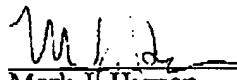
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KKH/MJH/ba

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. § 1.8

1. Fax Cover
2. Fee Transmittal Sheet
3. Petition for an Extension of Time for five months, to and including April 2, 2003
4. Provisional Election Under 37 C.F.R. § 1.143 With Traverse And Amendment Under 37 C.F.R. § 1.111
5. Version With Markings To Show Changes Made

I hereby certify that the above-listed correspondence is being facsimile transmitted to the United States Patent and Trademark Office on March 31, 2003.



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VIA FACSIMILE MARCH 31, 2003

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of: Ruben et al.

Attorney Docket No.: PT020P1

Application Serial No.: 09/836,392

Art Unit: 1631

Filed: April 18, 2001

Examiner: Martinell, J.

Title: Protein Tyrosine Kinase Receptor Polynucleotides, Polypeptides, and Antibodies

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

***In the Claims:***

Claims 1-10, 12, 14-16, 18, and 20-21 have been canceled without prejudice or disclaimer.

Claims 23-42 have been added.